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UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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CARLOS SALCIDO,

Case No. 3:17-cv-00280-MMD-VPC

Petitioner,

ORDER

v.

BAKER, *et al.*,

Respondents.

This closed habeas matter comes before the Court for consideration of possible issuance of a certificate of appealability (COA) following upon petitioner's timely filing of a notice of appeal. (ECF No. 6.) The action was dismissed without prejudice after petitioner failed to timely pay the filing fee in response to a court order.

When the district court denies relief on procedural grounds without reaching the underlying constitutional claims, the petitioner must show in order to obtain a COA that: (a) jurists of reason would find it debatable whether the petition stated a valid claim of a denial of a constitutional right; and (b) jurists of reason would find it debatable whether the district court was correct in its procedural ruling. *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). While both showings must be made, "a court may find that it can dispose of the application in a fair and prompt manner if it proceeds first to resolve the issue whose answer is more apparent from the record and arguments." 529 U.S. at 485.


Jurists of reason would not find it debatable whether the district court was correct in its procedural dismissal. By an order entered on October 30, 2017, the Court denied petitioner's pauper application and gave petitioner thirty (30) days from entry of the order

1 within which to have the filing fee sent to the Clerk of Court. The order informed petitioner:  
2 "Failure to timely comply with this order will result in the dismissal of this action without  
3 further advance notice." (ECF No. 3.) Neither the record nor the Court's administrative  
4 records reflected payment of the filing fee thereafter. Accordingly, on January 19, 2018,  
5 more than eighty (80) days after entry of the prior order, the action was dismissed without  
6 prejudice for failure to pay the filing fee. (ECF Nos. 4 and 5.) On the record presented,  
7 jurists of reason would not find the dismissal without prejudice to be debatable.

8 It therefore is ordered that a certificate of appealability is denied.<sup>1</sup>

9 The Clerk will transmit a copy of this order to the Court of Appeals in connection  
10 with the pending appeal.

11 DATED THIS 1<sup>st</sup> day of February 2018.

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14 MIRANDA M. DU  
UNITED STATES DISTRICT JUDGE  
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23 <sup>1</sup>While a brief period of time possibly remains in the federal limitation period at this  
24 point, petitioner at all times remains responsible for: (a) himself properly calculating the  
25 application of the limitation period to his particular case; and (b) timely seeking federal  
26 habeas relief in a properly commenced action, which includes timely payment of the filing  
27 fee if pauper status is not granted. If petitioner allows the federal limitation period to expire  
28 while pursuing the present appeal without timely filing a new petition in a new action  
before the limitation period expires, his claims thereafter may be time-barred. See 28  
U.S.C. § 2244(d). Petitioner therefore may wish to consider filing a new petition in a new  
action with dispatch. The present action, however, is, and remains, closed, following upon  
petitioner's failure to properly commence the action by timely paying the filing fee after  
having been given an opportunity to do so.